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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

12 Tony Martinez,

CV 10 2437
 No.

13 Plaintiff,

Plaintiff's Complaint

14 vs.

15 Chelsea Financing Partnership, LP;
 16 Kenneth Cole Productions, Inc. dba
 17 Kenneth Cole #5017; Tommy
 18 Hilfiger Retail, LLC dba Tommy
 19 Hilfiger Store #28; Banana Republic,
 20 LLC dba Banana Republic Factory
 21 Store #1997; Grace Holmes, Inc. dba
 22 J. Crew Store #0030; Barneys, Inc.
 23 which will do business in California
 24 as Barneys New York dba Barneys
 25 New York Outlet #415; The Gap,
 26 Inc. dba Gap Outlet #1042; Lucky
 27 Brand Dungarees Stores, Inc. dba
 28 Lucky Brand Jeans Outlet #3337;
 Levi's Only Stores, Inc. dba Dockers
 Outlet Store #520; PVH Retail
 Stores, Inc. dba Calvin Klein Store

EDL

1 #048; Retail Brand Alliance dba }
2 Brooks Brothers #6704; Zumiez, Inc. }
3 dba Zumiez #139; Nautica Retail }
4 USA, Inc. dba Nautica Napa #0030; }
5 Levi's Only Stores, Inc. dba Levi's }
6 Outlet Store #312, }
6 Defendants.

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I. SUMMARY

1. This is a civil rights action by plaintiff Tony Martinez (“Martinez”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

Napa Premium Outlet Common Areas
629 Factory Stores Drive
Napa, California 94558
(Assessor's Parcel No. 004.420.017)
(hereafter "the Napa Premium Outlets Common Area Facility")

Kenneth Cole #5017
591 Factory Stores Drive
Napa, California 94558
(hereafter "the Kenneth Cole Facility")

Tommy Hilfiger Store #28
629 Factory Stores Drive
Napa, California 94558
(hereafter "the Tommy Hilfiger Facility")

Banana Republic Factory Store #1997
Factory Stores Drive
Napa, California 94558
(hereafter "the Banana Republic Facility")

J. Crew Store #0030
867 Factory Stores Drive
Napa, California 94558
(hereafter "the J. Crew Facility")

Barneys New York Outlet #415
821 Factory Stores Drive
Napa, California 94558
(hereafter "the Barneys New York Facility")

1 Gap Outlet #1042
2 629 Factory Stores Drive
3 Napa, California 94558
4 (hereafter "the Gap Facility")

5 Lucky Brand Jeans Outlet #3337
6 629 Factory Stores Drive
7 Napa, California 94558
7 (hereafter "the Lucky Facility")

8 Dockers Outlet Store #520
9 653 Factory Stores Drive
10 Napa, California 94558
10 (hereafter "the Dockers Facility")

11
12 Calvin Klein Store #048
13 705 Factory Stores Drive
13 Napa, California 94558
14 (hereafter "the Calvin Klein Facility")

15
16 Brooks Brothers #6704
17 637 Factory Stores Drive
17 Napa, California 94558
18 (hereafter "the Brooks Brothers Facility")

19
20 Zumiez #139
21 629 Factory Stores Drive, Suite 0649
21 Napa, California 94558
21 (hereafter "the Zumiez Facility")

22
23 Nautica Napa #0030
24 701 Factory Stores Drive
24 Napa, California 94558
25 (hereafter "the Nautica Facility")

26
27 Levi's Outlet Store #312
28 Factory Stores Drive
Napa, California 94558
(hereafter "the Levi's Facility") (collectively, "the Facilities")

Martinez v. Chelsea Financing Partnership, LP, et al.
Plaintiff's Complaint

1 2. Pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C.
2 §§ 12101 et seq.), and related California statutes, Martinez seeks damages,
3 injunctive and declaratory relief, and attorney fees and costs, against:

- 4 • Chelsea Financing Partnership, LP (hereinafter the “Napa Premium
5 Outlets Common Area Defendant”);
- 6 • Kenneth Cole Productions, Inc. dba Kenneth Cole #5017 (hereinafter the
7 “Kenneth Cole Defendant”);
- 8 • Tommy Hilfiger Retail, LLC dba Tommy Hilfiger Store #28 (hereinafter
9 the “Tommy Hilfiger Defendant”);
- 10 • Banana Republic, LLC dba Banana Republic Factory Store #1997
11 (hereinafter the “Banana Republic Defendant”);
- 12 • Grace Holmes, Inc. dba J. Crew Store #0030 (hereinafter the “J. Crew
13 Defendant”);
- 14 • Barneys, Inc. which will do business in California as Barneys New York
15 dba Barneys New York Outlet #415 (hereinafter the “Barneys New York
16 Defendant”);
- 17 • The Gap, Inc. dba Gap Outlet #1042 (hereinafter the “Gap Defendant”);
- 18 • Lucky Brand Dungarees Stores, Inc. dba Lucky Brand Jeans Outlet #3337
19 (hereinafter the “Lucky Defendant”);
- 20 • Levi’s Only Stores, Inc. dba Dockers Outlet Store #520 (hereinafter the
21 “Dockers Defendant”);
- 22 • PVH Retail Stores, Inc. dba Calvin Klein Store #048 (hereinafter the
23 “Calvin Klein Defendant”);
- 24 • Retail Brand Alliance, Inc. dba Brooks Brothers #6704 (hereinafter the
25 “Brooks Brothers Defendant”);
- 26 • Zumiez, Inc. dba Zumiez #139 (hereinafter the “Zumiez Defendant”);
- 27 • Nautica Retail USA, Inc. dba Nautica Napa #0030 (hereinafter the
28 “Nautica Defendant”);

- Levi's Only Stores, Inc. dba Levi's Outlet Store #312 (hereinafter the "Levi's Defendant").

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1333 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1337.

5. Martinez's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. The Napa Premium Outlets Common Area Defendant owns, operates, manages, and/or leases the Napa Premium Outlets Common Area Facility, and consists of a person (or persons), firm, and/or corporation.

8. The Kenneth Cole Defendant owns, operates, manages, and/or leases the Kenneth Cole Facility, and consists of a person (or persons), firm, and/or corporation.

9. The Tommy Hilfiger Defendant owns, operates, manages, and/or leases the Tommy Hilfiger Facility, and consists of a person (or persons), firm, and/or corporation.

10. The Banana Republic Defendant owns, operates, manages, and/or leases the Banana Republic Facility, and consists of a person (or persons), firm, and/or corporation.

11. The J. Crew Defendant owns, operates, manages, and/or leases the J. Crew Facility, and consists of a person (or persons), firm, and/or corporation.

1 12. The Barneys New York Defendant owns, operates, manages, and/or
2 leases the Barneys New York Facility, and consists of a person (or persons),
3 firm, and/or corporation.

4 13. The Gap Defendant owns, operates, manages, and/or leases the Gap
5 Facility, and consists of a person (or persons), firm, and/or corporation.

6 14. The Lucky Defendant owns, operates, manages, and/or leases the
7 Lucky Facility, and consists of a person (or persons), firm, and/or corporation.

8 15. The Dockers Defendant owns, operates, manages, and/or leases the
9 Dockers Facility, and consists of a person (or persons), firm, and/or corporation.

10 16. The Calvin Klein Defendant owns, operates, manages, and/or leases
11 the Calvin Klein Facility, and consists of a person (or persons), firm, and/or
12 corporation.

13 17. The Brooks Brothers Defendant owns, operates, manages, and/or leases
14 the Brooks Brothers Facility, and consists of a person (or persons), firm,
15 and/or corporation.

16 18. The Zumiez Defendant owns, operates, manages, and/or leases the
17 Zumiez Facility, and consists of a person (or persons), firm, and/or corporation.

18 19. The Nautica Defendant owns, operates, manages, and/or leases the
19 Nautica Facility, and consists of a person (or persons), firm, and/or corporation.

20 20. The Levi's Defendant owns, operates, manages, and/or leases the
21 Levi's Facility, and consists of a person (or persons), firm, and/or corporation.

22 21. Martinez is a paraplegic as result of being shot in the back in 1987.
23 He requires the use of a wheelchair and mobility equipped vehicle when
24 traveling about in public. Consequently, Martinez is "physically disabled," as
25 defined by all applicable California and United States laws, and a member of the
26 public whose rights are protected by these laws.

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V. FACTS

22. The Napa Premium Outlets Common Area Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

23. The Kenneth Cole Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

24. The Tommy Hilfiger Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

25. The Banana Republic Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

26. The J. Crew Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

27. The Barneys New York Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

28. The Gap Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

29. The Lucky Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

30. The Dockers Facility is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

1 31. The Calvin Klein Facility is a sales or retail establishment, open to
2 the public, which is intended for nonresidential use and whose operation affects
3 commerce.

4 32. The Brooks Brothers Facility is a sales or retail establishment, open
5 to the public, which is intended for nonresidential use and whose operation
6 affects commerce.

7 33. The Zumiez Facility is a sales or retail establishment, open to the
8 public, which is intended for nonresidential use and whose operation affects
9 commerce.

10 34. The Nautica Facility is a sales or retail establishment, open to the
11 public, which is intended for nonresidential use and whose operation affects
12 commerce.

13 35. The Levi's Facility is a sales or retail establishment, open to the
14 public, which is intended for nonresidential use and whose operation affects
15 commerce.

16 36. Martinez visited the Facilities and encountered barriers (both
17 physical and intangible) that interfered with—if not outright denied—his ability
18 to use and enjoy the goods, services, privileges, and accommodations offered at
19 all of the facilities.

20 37. To the extent known by Martinez, the barriers at the Napa Premium
21 Outlets Common Area Facility included, but are not limited to, the following:

22 *Parking:*

23 • The slopes and/or cross slopes of the disabled parking spaces
24 throughout the shopping center exceed 2.0%;
25 • The slopes and/or cross slopes of the access aisles throughout the
26 shopping center exceed 2.0% (many due to encroaching built-up
27 curb ramps);

- 1 • The slopes and/or cross slopes of the cut-out curb ramps throughout
2 the shopping center exceed 2.0%;
- 3 • The signage at the disabled parking spaces throughout the shopping
4 center is incorrect;
- 5 • The signage at the van accessible parking spaces throughout the
6 shopping center is incorrect;
- 7 • There are no marked crossings where the accessible route from the
8 disabled parking spaces to the Facilities' entrances crosses into the
9 vehicular way;
- 10 • There are multiple ramps throughout the shopping center that are too
11 steep;
- 12 • There are many disabled parking spaces throughout the shopping
13 center with excessive slopes and/or cross slopes due to encroaching
14 ramps;

15 *Common Restroom:* There are numerous barriers to access, including, but
16 not limited to:

- 17 • The toilet tissue dispenser is an obstruction to the use of the side
18 grab bar;
- 19 • The toilet tissue dispenser contains sharp edges;
- 20 • The front roll of toilet tissue is more than 12 inches from the front
21 of the water closet;
- 22 • The pipes beneath the lavatories are improperly and incompletely
23 wrapped;
- 24 • The baby changing station is too high; and,
- 25 • There is insufficient strike side clearance when exiting the restroom;

26 *Common Seating:*

- 27 • None of the seating is designated as being accessible to the
28 disabled; and,

1 • None of the seating is accessible to the disabled.

2 These barriers prevented Martinez from enjoying full and equal access at
3 the Napa Premium Outlets Common Area Facility.

4 38. Martinez was also deterred from visiting the Napa Premium Outlets
5 Common Area Facility because he knew that the Napa Premium Outlets
6 Common Area Facility's goods, services, facilities, privileges, advantages, and
7 accommodations were unavailable to physically disabled patrons (such as
8 himself). He continues to be deterred from visiting the Napa Premium Outlets
9 Common Area Facility because of the future threats of injury created by these
10 barriers.

11 39. To the extent known by Martinez, the barriers at the Kenneth Cole
12 Facility included, but are not limited to, the following:

13 • There is no International Symbol of Accessibility ("ISA") mounted
14 at the entrance;

15 • The entrance door has inaccessible "panel" handles;

16 • Many of the aisles through the store are blocked by merchandise
17 and are thus too narrow;

18 • The dressing room door lock requires twisting, pinching and/or
19 grasping to operate;

20 • The dressing room bench is not secured to the wall;

21 • The dressing room bench is not 24 inches wide by 48 inches long;

22 • The pay point machine is too high and/or at too steep of an angle;

23 • Due to merchandise displayed, there is insufficient clear floor space
24 at the check out counter; and/or

25 • The check out counter is too high with no portion lowered to
26 accommodate a patron in a wheelchair; and/or

27 • The check out counter is cluttered with merchandise and thus lacks
28 the required depth.

1 These barriers prevented Martinez from enjoying full and equal access at
 2 the Kenneth Cole Facility.

3 40. Martinez was also deterred from visiting the Kenneth Cole Facility
 4 because he knew that the Kenneth Cole Facility's goods, services, facilities,
 5 privileges, advantages, and accommodations were unavailable to physically
 6 disabled patrons (such as himself). He continues to be deterred from visiting the
 7 Kenneth Cole Facility because of the future threats of injury created by these
 8 barriers.

9 41. To the extent known by Martinez, the barriers at the Tommy
 10 Hilfiger Facility included, but are not limited to, the following:

- 11 • There is no ISA mounted at the entrance;
- 12 • The entrance door has inaccessible "panel" handles;
- 13 • Many of the aisles through the store are blocked by merchandise
 and are thus too narrow;
- 14 • The dressing room bench is not 24 inches wide by 48 inches long;
- 15 • The pay point machine is too high and/or at too steep of an angle;
- 16 • Due to merchandise displayed, there is insufficient clear floor space
 at the check out counter; and/or
- 17 • The check out counter is too high with no portion lowered to
 accommodate a patron in a wheelchair; and/or
- 18 • The check out counter is cluttered with merchandise and thus lacks
 the required depth.

19 These barriers prevented Martinez from enjoying full and equal access at
 20 the Tommy Hilfiger Facility.

21 42. Martinez was also deterred from visiting the Tommy Hilfiger
 22 Facility because he knew that the Tommy Hilfiger Facility's goods, services,
 23 facilities, privileges, advantages, and accommodations were unavailable to
 24 physically disabled patrons (such as himself). He continues to be deterred from

1 visiting the Tommy Hilfiger Facility because of the future threats of injury
 2 created by these barriers.

3 43. To the extent known by Martinez, the barriers at the Banana
 4 Republic Facility included, but are not limited to, the following:

- 5 • There is no ISA mounted at the entrance;
- 6 • The entrance door has inaccessible “panel” handles;
- 7 • Many of the aisles through the store are blocked by merchandise
 and are thus too narrow;
- 8 • The dressing room bench is not 24 inches wide by 48 inches long;
- 9 • The pay point machine is too high and/or at too steep of an angle;
- 10 • Due to merchandise displayed, there is insufficient clear floor space
 at the check out counter; and/or
- 11 • The check out counter is too high with no portion lowered to
 accommodate a patron in a wheelchair; and/or
- 12 • The check out counter is cluttered with merchandise and thus lacks
 the required depth.

13 These barriers prevented Martinez from enjoying full and equal access at
 14 the Banana Republic Facility.

15 44. Martinez was also deterred from visiting the Banana Republic
 16 Facility because he knew that the Banana Republic Facility’s goods, services,
 17 facilities, privileges, advantages, and accommodations were unavailable to
 18 physically disabled patrons (such as himself). He continues to be deterred from
 19 visiting the Banana Republic Facility because of the future threats of injury
 20 created by these barriers.

21 45. To the extent known by Martinez, the barriers at the J. Crew Facility
 22 included, but are not limited to, the following:

- 23 • There is no ISA mounted at the entrance;
- 24 • The entrance door has inaccessible “panel” handles;

- 1 • Many of the aisles through the store are blocked by merchandise
- 2 and are thus too narrow;
- 3 • There is insufficient clear floor space within the dressing room;
- 4 • The dressing room bench is not 24 inches wide by 48 inches long;
- 5 • The clothes hooks in the dressing room are too high;
- 6 • The dressing room door lock requires twisting, pinching and/or
- 7 grasping to operate;
- 8 • The pay point machine is too high and/or at too steep of an angle;
- 9 • Due to merchandise displayed, there is insufficient clear floor space
- 10 at the check out counter; and/or
- 11 • The check out counter is too high with no portion lowered to
- 12 accommodate a patron in a wheelchair; and/or
- 13 • The check out counter is cluttered with merchandise and thus lacks
- 14 the required depth.

15 These barriers prevented Martinez from enjoying full and equal access at
 16 the J. Crew Facility.

17 46. Martinez was also deterred from visiting the J. Crew Facility
 18 because he knew that the J. Crew Facility's goods, services, facilities, privileges,
 19 advantages, and accommodations were unavailable to physically disabled
 20 patrons (such as himself). He continues to be deterred from visiting the J. Crew
 21 Facility because of the future threats of injury created by these barriers.

22 47. To the extent known by Martinez, the barriers at the Barneys New
 23 York Facility included, but are not limited to, the following:

- 24 • There is no ISA mounted at the entrance;
- 25 • The entrance door has inaccessible "panel" handles;
- 26 • Many of the aisles through the store are blocked by merchandise
- 27 and are thus too narrow;
- 28 • The dressing room bench is not 24 inches wide by 48 inches long;

- 1 • The pay point machine is too high and/or at too steep of an angle;
- 2 • Due to merchandise displayed, there is insufficient clear floor space
- 3 at the check out counter; and/or
- 4 • The check out counter is too high with no portion lowered to
- 5 accommodate a patron in a wheelchair; and/or
- 6 • The check out counter is cluttered with merchandise and thus lacks
- 7 the required depth.

8 These barriers prevented Martinez from enjoying full and equal access at
 9 the Barneys New York Facility.

10 48. Martinez was also deterred from visiting the Barneys New York
 11 Facility because he knew that the Barneys New York Facility's goods, services,
 12 facilities, privileges, advantages, and accommodations were unavailable to
 13 physically disabled patrons (such as himself). He continues to be deterred from
 14 visiting the Barneys New York Facility because of the future threats of injury
 15 created by these barriers.

16 49. To the extent known by Martinez, the barriers at the Gap Facility
 17 included, but are not limited to, the following:

- 18 • There is no ISA mounted at the entrance;
- 19 • The entrance door has inaccessible "panel" handles;
- 20 • Many of the aisles through the store are blocked by merchandise
- 21 and are thus too narrow;
- 22 • The dressing room bench is not 24 inches wide by 48 inches long;
- 23 • The pay point machine is too high and/or at too steep of an angle;
- 24 • Due to merchandise displayed, there is insufficient clear floor space
- 25 at the check out counter; and/or
- 26 • The check out counter is too high with no portion lowered to
- 27 accommodate a patron in a wheelchair; and/or

1 • The check out counter is cluttered with merchandise and thus lacks
 2 the required depth.

3 These barriers prevented Martinez from enjoying full and equal access at
 4 the Gap Facility.

5 50. Martinez was also deterred from visiting the Gap Facility because
 6 he knew that the Gap Facility's goods, services, facilities, privileges, advantages,
 7 and accommodations were unavailable to physically disabled patrons (such as
 8 himself). He continues to be deterred from visiting the Gap Facility because of
 9 the future threats of injury created by these barriers.

10 51. To the extent known by Martinez, the barriers at the Lucky Facility
 11 included, but are not limited to, the following:

12 • The ISA mounted at the entrance is too low;
 13 • The entrance door has inaccessible "panel" handles;
 14 • Many of the aisles through the store are blocked by merchandise
 15 and are thus too narrow;
 16 • The clothing hooks in the dressing room are mounted too high;
 17 • The dressing room bench is not 24 inches wide by 48 inches long;
 18 • The dressing room mirror is not mounted so as to afford a view to a
 19 person seated on the bench;
 20 • The pay point machine is too high and/or at too steep of an angle;
 21 • Due to merchandise displayed, there is insufficient clear floor space
 22 at the check out counter; and/or
 23 • The check out counter is too high with no portion lowered to
 24 accommodate a patron in a wheelchair; and/or
 25 • The check out counter is cluttered with merchandise and thus lacks
 26 the required depth.

27 These barriers prevented Martinez from enjoying full and equal access at
 28 the Lucky Facility.

1 52. Martinez was also deterred from visiting the Lucky Facility because
 2 he knew that the Lucky Facility's goods, services, facilities, privileges,
 3 advantages, and accommodations were unavailable to physically disabled
 4 patrons (such as himself). He continues to be deterred from visiting the Lucky
 5 Facility because of the future threats of injury created by these barriers.

6 53. To the extent known by Martinez, the barriers at the Dockers
 7 Facility included, but are not limited to, the following:

- 8 • There is no ISA mounted at the entrance;
- 9 • The entrance door has inaccessible "panel" handles;
- 10 • Many of the aisles through the store are blocked by merchandise
 and are thus too narrow;
- 11 • The dressing room bench is not 24 inches wide by 48 inches long;
- 12 • The pay point machine is too high and/or at too steep of an angle;
- 13 • Due to merchandise displayed, there is insufficient clear floor space
 at the check out counter; and/or
- 14 • The check out counter is too high with no portion lowered to
 accommodate a patron in a wheelchair; and/or
- 15 • The check out counter is cluttered with merchandise and thus lacks
 the required depth.

20 These barriers prevented Martinez from enjoying full and equal access at
 21 the Dockers Facility.

22 54. Martinez was also deterred from visiting the Dockers Facility
 23 because he knew that the Dockers Facility's goods, services, facilities,
 24 privileges, advantages, and accommodations were unavailable to physically
 25 disabled patrons (such as himself). He continues to be deterred from visiting the
 26 Dockers Facility because of the future threats of injury created by these barriers.

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1 55. To the extent known by Martinez, the barriers at the Calvin Klein
 2 Facility included, but are not limited to, the following:

- 3 • The ISA mounted at the entrance is too low;
- 4 • The entrance door has inaccessible “panel” handles;
- 5 • Many of the aisles through the store are blocked by merchandise
 and are thus too narrow;
- 6 • The dressing room bench is not secured to the wall;
- 7 • The dressing room bench is not 24 inches wide by 48 inches long;
- 8 • The pay point machine is too high and/or at too steep of an angle;
- 9 • Due to merchandise displayed, there is insufficient clear floor space
 at the check out counter; and/or
- 10 • The check out counter is too high with no portion lowered to
 accommodate a patron in a wheelchair; and/or
- 11 • The check out counter is cluttered with merchandise and thus lacks
 the required depth.

12 These barriers prevented Martinez from enjoying full and equal access at
 13 the Calvin Klein Facility.

14 56. Martinez was also deterred from visiting the Calvin Klein Facility
 15 because he knew that the Calvin Klein Facility’s goods, services, facilities,
 16 privileges, advantages, and accommodations were unavailable to physically
 17 disabled patrons (such as himself). He continues to be deterred from visiting the
 18 Calvin Klein Facility because of the future threats of injury created by these
 19 barriers.

20 57. To the extent known by Martinez, the barriers at the Brooks
 21 Brothers Facility included, but are not limited to, the following:

- 22 • There is no ISA mounted at the entrance;
- 23 • The entrance door has inaccessible “panel” handles;

- 1 • Many of the aisles through the store are blocked by merchandise
- 2 and are thus too narrow;
- 3 • The dressing room bench is not 24 inches wide by 48 inches long;
- 4 • The pay point machine is too high and/or at too steep of an angle;
- 5 • Due to merchandise displayed, there is insufficient clear floor space
- 6 at the check out counter; and/or
- 7 • The check out counter is too high with no portion lowered to
- 8 accommodate a patron in a wheelchair; and/or
- 9 • The check out counter is cluttered with merchandise and thus lacks
- 10 the required depth.

11 These barriers prevented Martinez from enjoying full and equal access at
 12 the Brooks Brothers Facility.

13 58. Martinez was also deterred from visiting the Brooks Brothers
 14 Facility because he knew that the Brooks Brothers Facility's goods, services,
 15 facilities, privileges, advantages, and accommodations were unavailable to
 16 physically disabled patrons (such as himself). He continues to be deterred from
 17 visiting the Brooks Brothers Facility because of the future threats of injury
 18 created by these barriers.

19 59. To the extent known by Martinez, the barriers at the Zumiez Facility
 20 included, but are not limited to, the following:

- 21 • There is no ISA mounted at the entrance;
- 22 • The entrance door has inaccessible "panel" handles;
- 23 • Many of the aisles through the store are blocked by merchandise
- 24 and are thus too narrow;
- 25 • The dressing room bench is not 24 inches wide by 48 inches long;
- 26 • The pay point machine is too high and/or at too steep of an angle;
- 27 • Due to merchandise displayed, there is insufficient clear floor space
- 28 at the check out counter; and/or

- 1 • The check out counter is too high with no portion lowered to
2 accommodate a patron in a wheelchair; and/or
- 3 • The check out counter is cluttered with merchandise and thus lacks
4 the required depth.

5 These barriers prevented Martinez from enjoying full and equal access at
6 the Zumiez Facility.

7 60. Martinez was also deterred from visiting the Zumiez Facility
8 because he knew that the Zumiez Facility's goods, services, facilities, privileges,
9 advantages, and accommodations were unavailable to physically disabled
10 patrons (such as himself). He continues to be deterred from visiting the Zumiez
11 Facility because of the future threats of injury created by these barriers.

12 61. To the extent known by Martinez, the barriers at the Nautica Facility
13 included, but are not limited to, the following:

- 14 • There is no ISA mounted at the entrance;
- 15 • The entrance door has inaccessible "panel" handles;
- 16 • Many of the aisles through the store are blocked by merchandise
17 and are thus too narrow;
- 18 • The dressing room bench is not 24 inches wide by 48 inches long;
- 19 • The grab bar in the dressing room is mounted too high;
- 20 • The clothes hook in the dressing room is mounted too high;
- 21 • The pay point machine is too high and/or at too steep of an angle;
- 22 • Due to merchandise displayed, there is insufficient clear floor space
23 at the check out counter; and/or
- 24 • The check out counter is too high with no portion lowered to
25 accommodate a patron in a wheelchair; and/or
- 26 • The check out counter is cluttered with merchandise and thus lacks
27 the required depth.

1 These barriers prevented Martinez from enjoying full and equal access at
 2 the Nautica Facility.

3 62. Martinez was also deterred from visiting the Nautica Facility
 4 because he knew that the Nautica Facility's goods, services, facilities, privileges,
 5 advantages, and accommodations were unavailable to physically disabled
 6 patrons (such as himself). He continues to be deterred from visiting the Nautica
 7 Facility because of the future threats of injury created by these barriers.

8 63. To the extent known by Martinez, the barriers at the Levi's Facility
 9 included, but are not limited to, the following:

- 10 • There is no ISA mounted at the entrance;
- 11 • The entrance door has inaccessible "panel" handles;
- 12 • Many of the aisles through the store are blocked by merchandise
 and are thus too narrow;
- 13 • The dressing room bench is not 24 inches wide by 48 inches long;
- 14 • The dressing room mirror is not mounted so as to afford a view to a
 person seated on the bench;
- 15 • The pay point machine is too high and/or at too steep of an angle;
- 16 • Due to merchandise displayed, there is insufficient clear floor space
 at the check out counter; and/or
- 17 • The check out counter is too high with no portion lowered to
 accommodate a patron in a wheelchair; and/or
- 18 • The check out counter is cluttered with merchandise and thus lacks
 the required depth.

24 These barriers prevented Martinez from enjoying full and equal access at
 25 the Levi's Facility.

26 64. Martinez was also deterred from visiting the Levi's Facility because
 27 he knew that the Levi's Facility's goods, services, facilities, privileges,
 28 advantages, and accommodations were unavailable to physically disabled

1 patrons (such as himself). He continues to be deterred from visiting the Levi's
2 Facility because of the future threats of injury created by these barriers.

3 65. Martinez also encountered barriers at the Facilities which violate
4 state and federal law, but were unrelated to his disability. Nothing within this
5 Complaint, however, should be construed as an allegation that Martinez is
6 seeking to remove barriers unrelated to his disability.

7 66. The Napa Premium Outlets Common Area Defendant knew that
8 these elements and areas of the Napa Premium Outlets Common Area Facility
9 were inaccessible, violate state and federal law, and interfere with (or deny)
10 access to the physically disabled. Moreover, the Napa Premium Outlets
11 Common Area Defendant has the financial resources to remove these barriers
12 from the Napa Premium Outlets Common Area Facility (without much difficulty
13 or expense), and make the Napa Premium Outlets Common Area Facility
14 accessible to the physically disabled. To date, however, the Napa Premium
15 Outlets Common Area Defendant refuses to either remove those barriers or seek
16 an unreasonable hardship exemption to excuse non-compliance.

17 67. At all relevant times, the Napa Premium Outlets Common Area
18 Defendant has possessed and enjoyed sufficient control and authority to modify
19 the Napa Premium Outlets Common Area Facility to remove impediments to
20 wheelchair access and to comply with the Americans with Disabilities Act
21 Accessibility Guidelines and Title 24 regulations. The Napa Premium Outlets
22 Common Area Defendant has not removed such impediments and has not
23 modified the Napa Premium Outlets Common Area Facility to conform to
24 accessibility standards. The Napa Premium Outlets Common Area Defendant
25 has intentionally maintained the Napa Premium Outlets Common Area Facility
26 in its current condition and has intentionally refrained from altering Napa
27 Premium Outlets Common Area Facility so that it complies with the accessibility
28 standards.

1 68. Martinez further alleges that the (continued) presence of barriers at
 2 the Napa Premium Outlets Common Area Facility is so obvious as to establish
 3 the Napa Premium Outlets Common Area Defendant's discriminatory intent. On
 4 information and belief, Martinez avers that evidence of the discriminatory intent
 5 includes the Napa Premium Outlets Common Area Defendant's refusal to adhere
 6 to relevant building standards; disregard for the building plans and permits
 7 issued for the Napa Premium Outlets Common Area Facility; conscientious
 8 decision to the architectural layout (as it currently exists) at the Napa Premium
 9 Outlets Common Area Facility; decision not to remove barriers from the Napa
 10 Premium Outlets Common Area Facility; and allowance that the Napa Premium
 11 Outlets Common Area Facility continues to exist in its non-compliant state.
 12 Martinez further alleges, on information and belief, that the Napa Premium
 13 Outlets Common Area Defendant is not in the midst of a remodel, and that the
 14 barriers present at the Napa Premium Outlets Common Area Facility are not
 15 isolated (or temporary) interruptions in access due to maintenance or repairs.¹

16 69. The Kenneth Cole Defendant knew that these elements and areas of
 17 the Kenneth Cole Facility were inaccessible, violate state and federal law, and
 18 interfere with (or deny) access to the physically disabled. Moreover, the
 19 Kenneth Cole Defendant has the financial resources to remove these barriers
 20 from the Kenneth Cole Facility (without much difficulty or expense), and make
 21 the Kenneth Cole Facility accessible to the physically disabled. To date,
 22 however, the Kenneth Cole Defendant refuses to either remove those barriers or
 23 seek an unreasonable hardship exemption to excuse non-compliance.

24 70. At all relevant times, the Kenneth Cole Defendant has possessed
 25 and enjoyed sufficient control and authority to modify the Kenneth Cole Facility
 26 to remove impediments to wheelchair access and to comply with the Americans
 27

28¹ Id.; 28 C.F.R. § 36.211(b)
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1 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
 2 Kenneth Cole Defendant has not removed such impediments and has not
 3 modified the Kenneth Cole Facility to conform to accessibility standards. The
 4 Kenneth Cole Defendant has intentionally maintained the Kenneth Cole Facility
 5 in its current condition and has intentionally refrained from altering the Kenneth
 6 Cole Facility so that it complies with the accessibility standards.

7 71. Martinez further alleges that the (continued) presence of barriers at
 8 the Kenneth Cole Facility is so obvious as to establish the Kenneth Cole
 9 Defendant' discriminatory intent. On information and belief, Martinez avers that
 10 evidence of the discriminatory intent includes the Kenneth Cole Defendant's
 11 refusal to adhere to relevant building standards; disregard for the building plans
 12 and permits issued for the Kenneth Cole Facility; conscientious decision to the
 13 architectural layout (as it currently exists) at the Kenneth Cole Facility; decision
 14 not to remove barriers from the Kenneth Cole Facility; and allowance that the
 15 Kenneth Cole Facility continues to exist in its non-compliant state. Martinez
 16 further alleges, on information and belief, that the Kenneth Cole Defendant is not
 17 in the midst of a remodel, and that the barriers present at the Kenneth Cole
 18 Facility are not isolated (or temporary) interruptions in access due to
 19 maintenance or repairs.²

20 72. The Tommy Hilfiger Defendant knew that these elements and areas
 21 of the Tommy Hilfiger Facility were inaccessible, violate state and federal law,
 22 and interfere with (or deny) access to the physically disabled. Moreover, the
 23 Tommy Hilfiger Defendant has the financial resources to remove these barriers
 24 from the Tommy Hilfiger Facility (without much difficulty or expense), and
 25 make the Tommy Hilfiger Facility accessible to the physically disabled. To date,

28 2 Id.; 28 C.F.R. § 36.211(b)
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1 however, the Tommy Hilfiger Defendant refuses to either remove those barriers
 2 or seek an unreasonable hardship exemption to excuse non-compliance.

3 73. At all relevant times, the Tommy Hilfiger Defendant has possessed
 4 and enjoyed sufficient control and authority to modify the Tommy Hilfiger
 5 Facility to remove impediments to wheelchair access and to comply with the
 6 Americans with Disabilities Act Accessibility Guidelines and Title 24
 7 regulations. The Tommy Hilfiger Defendant has not removed such impediments
 8 and has not modified the Tommy Hilfiger Facility to conform to accessibility
 9 standards. The Tommy Hilfiger Defendant has intentionally maintained the
 10 Tommy Hilfiger Facility in its current condition and has intentionally refrained
 11 from altering Tommy Hilfiger Facility so that it complies with the accessibility
 12 standards.

13 74. Martinez further alleges that the (continued) presence of barriers at
 14 the Tommy Hilfiger Facility is so obvious as to establish the Tommy Hilfiger
 15 Defendant's discriminatory intent. On information and belief, Martinez avers
 16 that evidence of the discriminatory intent includes the Tommy Hilfiger
 17 Defendant's refusal to adhere to relevant building standards; disregard for the
 18 building plans and permits issued for the Tommy Hilfiger Facility; conscientious
 19 decision to the architectural layout (as it currently exists) at the Tommy Hilfiger
 20 Facility; decision not to remove barriers from the Tommy Hilfiger Facility; and
 21 allowance that the Tommy Hilfiger Facility continues to exist in its non-
 22 compliant state. Martinez further alleges, on information and belief, that the
 23 Tommy Hilfiger Defendant is not in the midst of a remodel, and that the barriers
 24 present at the Tommy Hilfiger Facility are not isolated (or temporary)
 25 interruptions in access due to maintenance or repairs.³

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³ Id.; 28 C.F.R. § 36.211(b)

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1 75. The Banana Republic Defendant knew that these elements and areas
2 of the Banana Republic Facility were inaccessible, violate state and federal law,
3 and interfere with (or deny) access to the physically disabled. Moreover, the
4 Banana Republic Defendant has the financial resources to remove these barriers
5 from the Banana Republic Facility (without much difficulty or expense), and
6 make the Banana Republic Facility accessible to the physically disabled. To
7 date, however, the Banana Republic Defendant refuses to either remove those
8 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

9 76. At all relevant times, the Banana Republic Defendant has possessed
10 and enjoyed sufficient control and authority to modify the Banana Republic
11 Facility to remove impediments to wheelchair access and to comply with the
12 Americans with Disabilities Act Accessibility Guidelines and Title 24
13 regulations. The Banana Republic Defendant has not removed such
14 impediments and has not modified the Banana Republic Facility to conform to
15 accessibility standards. The Banana Republic Defendant has intentionally
16 maintained the Banana Republic Facility in its current condition and has
17 intentionally refrained from altering the Banana Republic Facility so that it
18 complies with the accessibility standards.

19 77. Martinez further alleges that the (continued) presence of barriers at
20 the Banana Republic Facility is so obvious as to establish the Banana Republic
21 Defendant's discriminatory intent. On information and belief, Martinez avers
22 that evidence of the discriminatory intent includes the Banana Republic
23 Defendant's refusal to adhere to relevant building standards; disregard for the
24 building plans and permits issued for the Banana Republic Facility;
25 conscientious decision to the architectural layout (as it currently exists) at the
26 Banana Republic Facility; decision not to remove barriers from the Banana
27 Republic Facility; and allowance that the Banana Republic Facility continues to
28 exist in its non-compliant state. Martinez further alleges, on information and

1 belief, that the Banana Republic Defendant is not in the midst of a remodel, and
 2 that the barriers present at the Banana Republic Facility are not isolated (or
 3 temporary) interruptions in access due to maintenance or repairs.⁴

4 78. The J. Crew Defendant knew that these elements and areas of the J.
 5 Crew Facility were inaccessible, violate state and federal law, and interfere with
 6 (or deny) access to the physically disabled. Moreover, the J. Crew Defendant
 7 has the financial resources to remove these barriers from the J. Crew Facility
 8 (without much difficulty or expense), and make the J. Crew Facility accessible to
 9 the physically disabled. To date, however, the J. Crew Defendant refuses to
 10 either remove those barriers or seek an unreasonable hardship exemption to
 11 excuse non-compliance.

12 79. At all relevant times, the J. Crew Defendant has possessed and
 13 enjoyed sufficient control and authority to modify the J. Crew Facility to remove
 14 impediments to wheelchair access and to comply with the Americans with
 15 Disabilities Act Accessibility Guidelines and Title 24 regulations. The J. Crew
 16 Defendant has not removed such impediments and has not modified the J. Crew
 17 Facility to conform to accessibility standards. The J. Crew Defendant has
 18 intentionally maintained the J. Crew Facility in its current condition and has
 19 intentionally refrained from altering the J. Crew Facility so that it complies with
 20 the accessibility standards.

21 80. Martinez further alleges that the (continued) presence of barriers at
 22 the J. Crew Facility is so obvious as to establish the J. Crew Defendant's
 23 discriminatory intent. On information and belief, Martinez avers that evidence of
 24 the discriminatory intent includes the J. Crew Defendant's refusal to adhere to
 25 relevant building standards; disregard for the building plans and permits issued
 26 for the J. Crew Facility; conscientious decision to the architectural layout (as it
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28 ⁴ Id.; 28 C.F.R. § 36.211(b)

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1 currently exists) at the J. Crew Facility; decision not to remove barriers from the
 2 J. Crew Facility; and allowance that the J. Crew Facility continues to exist in its
 3 non-compliant state. Martinez further alleges, on information and belief, that the
 4 J. Crew Defendant is not in the midst of a remodel, and that the barriers present
 5 at the J. Crew Facility are not isolated (or temporary) interruptions in access due
 6 to maintenance or repairs.⁵

7 81. The Barneys New York Defendant knew that these elements and
 8 areas of the Barneys New York Facility were inaccessible, violate state and
 9 federal law, and interfere with (or deny) access to the physically disabled.
 10 Moreover, the Barneys New York Defendant has the financial resources to
 11 remove these barriers from the Barneys New York Facility (without much
 12 difficulty or expense), and make the Barneys New York Facility accessible to the
 13 physically disabled. To date, however, the Barneys New York Defendant refuses
 14 to either remove those barriers or seek an unreasonable hardship exemption to
 15 excuse non-compliance.

16 82. At all relevant times, the Barneys New York Defendant has
 17 possessed and enjoyed sufficient control and authority to modify the Barneys
 18 New York Facility to remove impediments to wheelchair access and to comply
 19 with the Americans with Disabilities Act Accessibility Guidelines and Title 24
 20 regulations. The Barneys New York Defendant has not removed such
 21 impediments and has not modified the Barneys New York Facility to conform to
 22 accessibility standards. The Barneys New York Defendant has intentionally
 23 maintained the Barneys New York Facility in its current condition and has
 24 intentionally refrained from altering the Barneys New York Facility so that it
 25 complies with the accessibility standards.

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⁵ *Id.*; 28 C.F.R. § 36.211(b)

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1 83. Martinez further alleges that the (continued) presence of barriers at
 2 the Barneys New York Facility is so obvious as to establish the Barneys New
 3 York Defendant's discriminatory intent. On information and belief, Martinez
 4 avers that evidence of the discriminatory intent includes the Barneys New York
 5 Defendant's refusal to adhere to relevant building standards; disregard for the
 6 building plans and permits issued for the Barneys New York Facility;
 7 conscientious decision to the architectural layout (as it currently exists) at the
 8 Barneys New York Facility; decision not to remove barriers from the Barneys
 9 New York Facility; and allowance that the Barneys New York Facility continues
 10 to exist in its non-compliant state. Martinez further alleges, on information and
 11 belief, that the Barneys New York Defendant is not in the midst of a remodel,
 12 and that the barriers present at the Barneys New York Facility are not isolated (or
 13 temporary) interruptions in access due to maintenance or repairs.⁶

14 84. The Gap Defendant knew that these elements and areas of the Gap
 15 Facility were inaccessible, violate state and federal law, and interfere with (or
 16 deny) access to the physically disabled. Moreover, the Gap Defendant has the
 17 financial resources to remove these barriers from the Gap Facility (without much
 18 difficulty or expense), and make the Gap Facility accessible to the physically
 19 disabled. To date, however, the Gap Defendant refuses to either remove those
 20 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

21 85. At all relevant times, the Gap Defendant has possessed and enjoyed
 22 sufficient control and authority to modify the Gap Facility to remove
 23 impediments to wheelchair access and to comply with the Americans with
 24 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Gap
 25 Defendant has not removed such impediments and has not modified the Gap
 26 Facility to conform to accessibility standards. The Gap Defendant has
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28⁶ Id.; 28 C.F.R. § 36.211(b)
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1 intentionally maintained the Gap Facility in its current condition and has
 2 intentionally refrained from altering the Gap Facility so that it complies with the
 3 accessibility standards.

4 86. Martinez further alleges that the (continued) presence of barriers at
 5 the Gap Facility is so obvious as to establish the Gap Defendant's discriminatory
 6 intent. On information and belief, Martinez avers that evidence of the
 7 discriminatory intent includes the Gap Defendant's refusal to adhere to relevant
 8 building standards; disregard for the building plans and permits issued for the
 9 Gap Facility; conscientious decision to the architectural layout (as it currently
 10 exists) at the Gap Facility; decision not to remove barriers from the Gap Facility;
 11 and allowance that the Gap Facility continues to exist in its non-compliant state.
 12 Martinez further alleges, on information and belief, that the Gap Defendant is not
 13 in the midst of a remodel, and that the barriers present at the Gap Facility are not
 14 isolated (or temporary) interruptions in access due to maintenance or repairs.⁷

15 87. The Lucky Defendant knew that these elements and areas of the
 16 Lucky Facility were inaccessible, violate state and federal law, and interfere with
 17 (or deny) access to the physically disabled. Moreover, the Lucky Defendant has
 18 the financial resources to remove these barriers from the Lucky Facility (without
 19 much difficulty or expense), and make the Lucky Facility accessible to the
 20 physically disabled. To date, however, the Lucky Defendant refuses to either
 21 remove those barriers or seek an unreasonable hardship exemption to excuse
 22 non-compliance.

23 88. At all relevant times, the Lucky Defendant has possessed and
 24 enjoyed sufficient control and authority to modify the Lucky Facility to remove
 25 impediments to wheelchair access and to comply with the Americans with
 26 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Lucky

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 28⁷ Id.; 28 C.F.R. § 36.211(b)
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1 Defendant has not removed such impediments and has not modified the Lucky
 2 Facility to conform to accessibility standards. The Lucky Defendant has
 3 intentionally maintained the Lucky Facility in its current condition and has
 4 intentionally refrained from altering the Lucky Facility so that it complies with
 5 the accessibility standards.

6 89. Martinez further alleges that the (continued) presence of barriers at
 7 the Lucky Facility is so obvious as to establish the Lucky Defendant's
 8 discriminatory intent. On information and belief, Martinez avers that evidence of
 9 the discriminatory intent includes the Lucky Defendant's refusal to adhere to
 10 relevant building standards; disregard for the building plans and permits issued
 11 for the Lucky Facility; conscientious decision to the architectural layout (as it
 12 currently exists) at the Lucky Facility; decision not to remove barriers from the
 13 Lucky Facility; and allowance that the Lucky Facility continues to exist in its
 14 non-compliant state. Martinez further alleges, on information and belief, that the
 15 Lucky Defendant is not in the midst of a remodel, and that the barriers present at
 16 the Lucky Facility are not isolated (or temporary) interruptions in access due to
 17 maintenance or repairs.⁸

18 90. The Dockers Defendant knew that these elements and areas of the
 19 Dockers Facility were inaccessible, violate state and federal law, and interfere
 20 with (or deny) access to the physically disabled. Moreover, the Dockers
 21 Defendant has the financial resources to remove these barriers from the Dockers
 22 Facility (without much difficulty or expense), and make the Dockers Facility
 23 accessible to the physically disabled. To date, however, the Dockers Defendant
 24 refuses to either remove those barriers or seek an unreasonable hardship
 25 exemption to excuse non-compliance.

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⁸ Id.; 28 C.F.R. § 36.211(b)

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1 91. At all relevant times, the Dockers Defendant has possessed and
 2 enjoyed sufficient control and authority to modify the Dockers Facility to remove
 3 impediments to wheelchair access and to comply with the Americans with
 4 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Dockers
 5 Defendant has not removed such impediments and has not modified the Dockers
 6 Facility to conform to accessibility standards. The Dockers Defendant has
 7 intentionally maintained the Dockers Facility in its current condition and has
 8 intentionally refrained from altering the Dockers Facility so that it complies with
 9 the accessibility standards.

10 92. Martinez further alleges that the (continued) presence of barriers at
 11 the Dockers Facility is so obvious as to establish the Dockers Defendant's
 12 discriminatory intent. On information and belief, Martinez avers that evidence of
 13 the discriminatory intent includes the Dockers Defendant's refusal to adhere to
 14 relevant building standards; disregard for the building plans and permits issued
 15 for the Dockers Facility; conscientious decision to the architectural layout (as it
 16 currently exists) at the Dockers Facility; decision not to remove barriers from the
 17 Dockers Facility; and allowance that the Dockers Facility continues to exist in its
 18 non-compliant state. Martinez further alleges, on information and belief, that the
 19 Dockers Defendant is not in the midst of a remodel, and that the barriers present
 20 at the Dockers Facility are not isolated (or temporary) interruptions in access due
 21 to maintenance or repairs.⁹

22 93. The Calvin Klein Defendant knew that these elements and areas of
 23 the Calvin Klein Facility were inaccessible, violate state and federal law, and
 24 interfere with (or deny) access to the physically disabled. Moreover, the Calvin
 25 Klein Defendant has the financial resources to remove these barriers from the
 26 Calvin Klein Facility (without much difficulty or expense), and make the Calvin
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28 ⁹ Id.; 28 C.F.R. § 36.211(b)

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1 Klein Facility accessible to the physically disabled. To date, however, the
 2 Calvin Klein Defendant refuses to either remove those barriers or seek an
 3 unreasonable hardship exemption to excuse non-compliance.

4 94. At all relevant times, the Calvin Klein Defendant has possessed and
 5 enjoyed sufficient control and authority to modify the Calvin Klein Facility to
 6 remove impediments to wheelchair access and to comply with the Americans
 7 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
 8 Calvin Klein Defendant has not removed such impediments and has not modified
 9 the Calvin Klein Facility to conform to accessibility standards. The Calvin Klein
 10 Defendant has intentionally maintained the Calvin Klein Facility in its current
 11 condition and has intentionally refrained from altering the Calvin Klein Facility
 12 so that it complies with the accessibility standards.

13 95. Martinez further alleges that the (continued) presence of barriers at
 14 the Calvin Klein Facility is so obvious as to establish the Calvin Klein
 15 Defendant's discriminatory intent. On information and belief, Martinez avers
 16 that evidence of the discriminatory intent includes the Calvin Klein Defendant's
 17 refusal to adhere to relevant building standards; disregard for the building plans
 18 and permits issued for the Calvin Klein Facility; conscientious decision to the
 19 architectural layout (as it currently exists) at the Calvin Klein Facility; decision
 20 not to remove barriers from the Calvin Klein Facility; and allowance that the
 21 Calvin Klein Facility continues to exist in its non-compliant state. Martinez
 22 further alleges, on information and belief, that the Calvin Klein Defendant is not
 23 in the midst of a remodel, and that the barriers present at the Calvin Klein
 24 Facility are not isolated (or temporary) interruptions in access due to
 25 maintenance or repairs.¹⁰

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¹⁰ Id.; 28 C.F.R. § 36.211(b)

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1 96. The Brooks Brothers Defendant knew that these elements and areas
 2 of the Brooks Brothers Facility were inaccessible, violate state and federal law,
 3 and interfere with (or deny) access to the physically disabled. Moreover, the
 4 Brooks Brothers Defendant has the financial resources to remove these barriers
 5 from the Brooks Brothers Facility (without much difficulty or expense), and
 6 make the Brooks Brothers Facility accessible to the physically disabled. To date,
 7 however, the Brooks Brothers Defendant refuses to either remove those barriers
 8 or seek an unreasonable hardship exemption to excuse non-compliance.

9 97. At all relevant times, the Brooks Brothers Defendant has possessed
 10 and enjoyed sufficient control and authority to modify the Brooks Brothers
 11 Facility to remove impediments to wheelchair access and to comply with the
 12 Americans with Disabilities Act Accessibility Guidelines and Title 24
 13 regulations. The Brooks Brothers Defendant has not removed such impediments
 14 and has not modified the Brooks Brothers Facility to conform to accessibility
 15 standards. The Brooks Brothers Defendant has intentionally maintained the
 16 Brooks Brothers Facility in its current condition and has intentionally refrained
 17 from altering the Brooks Brothers Facility so that it complies with the
 18 accessibility standards.

19 98. Martinez further alleges that the (continued) presence of barriers at
 20 the Brooks Brothers Facility is so obvious as to establish the Brooks Brothers
 21 Defendant's discriminatory intent. On information and belief, Martinez avers
 22 that evidence of the discriminatory intent includes the Brooks Brothers
 23 Defendant's refusal to adhere to relevant building standards; disregard for the
 24 building plans and permits issued for the Brooks Brothers Facility; conscientious
 25 decision to the architectural layout (as it currently exists) at the Brooks Brothers
 26 Facility; decision not to remove barriers from the Brooks Brothers Facility; and
 27 allowance that the Brooks Brothers Facility continues to exist in its non-
 28 compliant state. Martinez further alleges, on information and belief, that the

1 Brooks Brothers Defendant is not in the midst of a remodel, and that the barriers
 2 present at the Brooks Brothers Facility are not isolated (or temporary)
 3 interruptions in access due to maintenance or repairs.¹¹

4 99. The Zumiez Defendant knew that these elements and areas of the
 5 Zumiez Facility were inaccessible, violate state and federal law, and interfere
 6 with (or deny) access to the physically disabled. Moreover, the Zumiez
 7 Defendant has the financial resources to remove these barriers from the Zumiez
 8 Facility (without much difficulty or expense), and make the Zumiez Facility
 9 accessible to the physically disabled. To date, however, the Zumiez Defendant
 10 refuses to either remove those barriers or seek an unreasonable hardship
 11 exemption to excuse non-compliance.

12 100. At all relevant times, the Zumiez Defendant has possessed and
 13 enjoyed sufficient control and authority to modify the Zumiez Facility to remove
 14 impediments to wheelchair access and to comply with the Americans with
 15 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Zumiez
 16 Defendant has not removed such impediments and has not modified the Zumiez
 17 Facility to conform to accessibility standards. The Zumiez Defendant has
 18 intentionally maintained the Zumiez Facility in its current condition and has
 19 intentionally refrained from altering the Zumiez Facility so that it complies with
 20 the accessibility standards.

21 101. Martinez further alleges that the (continued) presence of barriers at
 22 the Zumiez Facility is so obvious as to establish the Zumiez Defendant's
 23 discriminatory intent. On information and belief, Martinez avers that evidence of
 24 the discriminatory intent includes the Zumiez Defendant's refusal to adhere to
 25 relevant building standards; disregard for the building plans and permits issued
 26 for the Zumiez Facility; conscientious decision to the architectural layout (as it
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28¹¹ Id.; 28 C.F.R. § 36.211(b)

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1 currently exists) at the Zumiez Facility; decision not to remove barriers from the
 2 Zumiez Facility; and allowance that the Zumiez Facility continues to exist in its
 3 non-compliant state. Martinez further alleges, on information and belief, that the
 4 Zumiez Defendant is not in the midst of a remodel, and that the barriers present
 5 at the Zumiez Facility are not isolated (or temporary) interruptions in access due
 6 to maintenance or repairs.¹²

7 102. The Nautica Defendant knew that these elements and areas of the
 8 Nautica Facility were inaccessible, violate state and federal law, and interfere
 9 with (or deny) access to the physically disabled. Moreover, the Nautica
 10 Defendant has the financial resources to remove these barriers from the Nautica
 11 Facility (without much difficulty or expense), and make the Nautica Facility
 12 accessible to the physically disabled. To date, however, the Nautica Defendant
 13 refuses to either remove those barriers or seek an unreasonable hardship
 14 exemption to excuse non-compliance.

15 103. At all relevant times, the Nautica Defendant has possessed and
 16 enjoyed sufficient control and authority to modify the Nautica Facility to remove
 17 impediments to wheelchair access and to comply with the Americans with
 18 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Nautica
 19 Defendant has not removed such impediments and has not modified the Nautica
 20 Facility to conform to accessibility standards. The Nautica Defendant has
 21 intentionally maintained the Nautica Facility in its current condition and has
 22 intentionally refrained from altering the Nautica Facility so that it complies with
 23 the accessibility standards.

24 104. Martinez further alleges that the (continued) presence of barriers at
 25 the Nautica Facility is so obvious as to establish the Nautica Defendant's
 26 discriminatory intent. On information and belief, Martinez avers that evidence of
 27

28¹² Id.; 28 C.F.R. § 36.211(b)

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1 the discriminatory intent includes the Nautica Defendant's refusal to adhere to
 2 relevant building standards; disregard for the building plans and permits issued
 3 for the Nautica Facility; conscientious decision to the architectural layout (as it
 4 currently exists) at the Nautica Facility; decision not to remove barriers from the
 5 Nautica Facility; and allowance that the Nautica Facility continues to exist in its
 6 non-compliant state. Martinez further alleges, on information and belief, that the
 7 Nautica Defendant is not in the midst of a remodel, and that the barriers present
 8 at the Nautica Facility are not isolated (or temporary) interruptions in access due
 9 to maintenance or repairs.¹³

105. The Levi's Defendant knew that these elements and areas of the
 11 Levi's Facility were inaccessible, violate state and federal law, and interfere with
 12 (or deny) access to the physically disabled. Moreover, the Levi's Defendant has
 13 the financial resources to remove these barriers from the Levi's Facility (without
 14 much difficulty or expense), and make the Levi's Facility accessible to the
 15 physically disabled. To date, however, the Levi's Defendant refuses to either
 16 remove those barriers or seek an unreasonable hardship exemption to excuse
 17 non-compliance.

106. At all relevant times, the Levi's Defendant has possessed and
 19 enjoyed sufficient control and authority to modify the Levi's Facility to remove
 20 impediments to wheelchair access and to comply with the Americans with
 21 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Levi's
 22 Defendant has not removed such impediments and has not modified the Levi's
 23 Facility to conform to accessibility standards. The Levi's Defendant has
 24 intentionally maintained the Levi's Facility in its current condition and has
 25 intentionally refrained from altering the Levi's Facility so that it complies with
 26 the accessibility standards.

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¹³ Id.; 28 C.F.R. § 36.211(b)

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1 107. Martinez further alleges that the (continued) presence of barriers at
2 the Levi's Facility is so obvious as to establish the Levi's Defendant's
3 discriminatory intent. On information and belief, Martinez avers that evidence of
4 the discriminatory intent includes the Levi's Defendant's refusal to adhere to
5 relevant building standards; disregard for the building plans and permits issued
6 for the Levi's Facility; conscientious decision to the architectural layout (as it
7 currently exists) at the Levi's Facility; decision not to remove barriers from the
8 Levi's Facility; and allowance that the Levi's Facility continues to exist in its
9 non-compliant state. Martinez further alleges, on information and belief, that the
10 Levi's Defendant is not in the midst of a remodel, and that the barriers present at
11 the Levi's Facility are not isolated (or temporary) interruptions in access due to
12 maintenance or repairs.¹⁴

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

(The Napa Premium Outlets Common Area Facility)

17 108. Martinez incorporates the allegations contained in paragraphs 1
18 through 107 for this claim.

19 109. Title III of the ADA holds as a “general rule” that no individual
20 shall be discriminated against on the basis of disability in the full and equal
21 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
22 offered by any person who owns, operates, or leases a place of public
23 accommodation. 42 U.S.C. § 12182(a).

24 110. The Napa Premium Outlets Common Area Defendant discriminated
25 against Martinez by denying “full and equal enjoyment” and use of the goods,

²⁸ ¹⁴ Id.; 28 C.F.R. § 36.211(b)
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1 services, facilities, privileges or accommodations of the Napa Premium Outlets
 2 Common Area Facility during each visit and each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 111. The ADA specifically prohibits failing to remove architectural
 5 barriers, which are structural in nature, in existing facilities where such removal
 6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
 7 achievable” is defined as “easily accomplishable and able to be carried out
 8 without much difficulty or expense.” Id. § 12181(9).

9 112. When an entity can demonstrate that removal of a barrier is not
 10 readily achievable, a failure to make goods, services, facilities, or
 11 accommodations available through alternative methods is also specifically
 12 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

13 113. Here, Martinez alleges that the Napa Premium Outlets Common
 14 Area Defendant can easily remove the architectural barriers at the Napa Premium
 15 Outlets Common Area Facility without much difficulty or expense, and that the
 16 Napa Premium Outlets Common Area Defendant violated the ADA by failing to
 17 remove those barriers, when it was readily achievable to do so.

18 114. In the alternative, if it was not “readily achievable” for the Napa
 19 Premium Outlets Common Area Defendant to remove the Napa Premium Outlets
 20 Common Area Facility’s barriers, then the Napa Premium Outlets Common Area
 21 Defendant violated the ADA by failing to make the required services available
 22 through alternative methods, which are readily achievable.

23 Failure to Design and Construct an Accessible Facility

24 115. On information and belief, the Napa Premium Outlets Common
 25 Area Facility was designed or constructed (or both) after January 26, 1992—
 26 independently triggering access requirements under Title III of the ADA.

27 116. The ADA also prohibits designing and constructing facilities for
 28 first occupancy after January 26, 1993, that aren’t readily accessible to, and

1 usable by, individuals with disabilities when it was structurally practicable to do
 2 so. 42 U.S.C. § 12183(a)(1).

3 117. Here, the Napa Premium Outlets Common Area Defendant violated
 4 the ADA by designing or constructing (or both) the Napa Premium Outlets
 5 Common Area Facility in a manner that was not readily accessible to the
 6 physically disabled public—including Martinez—when it was structurally
 7 practical to do so.¹⁵

8 Failure to Make an Altered Facility Accessible

9 118. On information and belief, the Napa Premium Outlets Common
 10 Area Facility was modified after January 26, 1992, independently triggering
 11 access requirements under the ADA.

12 119. The ADA also requires that facilities altered in a manner that affects
 13 (or could affect) its usability must be made readily accessible to individuals with
 14 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
 15 an area that contains a facility’s primary function also requires adding making
 16 the paths of travel, bathrooms, telephones, and drinking fountains serving that
 17 area accessible to the maximum extent feasible. *Id.*

18 120. Here, the Napa Premium Outlets Common Area Defendant altered
 19 the Napa Premium Outlets Common Area Facility in a manner that violated the
 20 ADA and was not readily accessible to the physically disabled public—including
 21 Martinez—to the maximum extent feasible.

22 Failure to Modify Existing Policies and Procedures

23 121. The ADA also requires reasonable modifications in policies,
 24 practices, or procedures, when necessary to afford such goods, services,
 25 facilities, or accommodations to individuals with disabilities, unless the entity
 26
 27

28 ¹⁵ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
 29 private attorney general under either state or federal statutes.

can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 122. Here, the Napa Premium Outlets Common Area Defendant violated
4 the ADA by failing to make reasonable modifications in policies, practices, or
5 procedures at the Napa Premium Outlets Common Area Facility, when these
6 modifications were necessary to afford (and would not fundamentally alter the
7 nature of) these goods, services, facilities, or accommodations.

8 123. Martinez seeks all relief available under the ADA (*i.e.*, injunctive
9 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
10 U.S.C. § 12205.

11 124. Martinez also seeks a finding from this Court (*i.e.*, declaratory
12 relief) that the Napa Premium Outlets Common Area Defendant violated the
13 ADA in order to pursue damages under California's Unruh Civil Rights Act or
14 Disabled Persons Act.

VII. SECOND CLAIM

Disabled Persons Act

(The Napa Premium Outlets Common Area Facility)

18 125. Martinez incorporates the allegations contained in paragraphs 1
19 through 107 for this claim.

126. California Civil Code § 54 states, in part, that: Individuals with
disabilities have the same right as the general public to the full and free use of
the streets, sidewalks, walkways, public buildings and facilities, and other public
places.

127. California Civil Code § 54.1 also states, in part, that: Individuals
with disabilities shall be entitled to full and equal access to accommodations,
facilities, telephone facilities, places of public accommodation, and other places
to which the general public is invited.

128. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

129. Here, the Napa Premium Outlets Common Area Defendant discriminated against the physically disabled public—including Martinez—by denying them full and equal access to the Napa Premium Outlets Common Area Facility. The Napa Premium Outlets Common Area Defendant also violated Martinez’s rights under the ADA, and, therefore, infringed upon or violated (or both) Martinez’s rights under the Disabled Persons Act.

130. For each offense of the Disabled Persons Act, Martinez seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

131. He also seeks to enjoin the Napa Premium Outlets Common Area Defendant from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

(The Napa Premium Outlets Common Area Facility)

132. Martinez incorporates the allegations contained in paragraphs 1 through 107 for this claim.

133. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

134. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

135. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

136. The Napa Premium Outlets Common Area Defendant's aforementioned acts and omissions denied the physically disabled public—including Martinez—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

137. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Martinez by violating the Unruh Act.

138. Martinez was damaged by the Napa Premium Outlets Common Area Defendant's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

139. Martinez also seeks to enjoin the Napa Premium Outlets Common Area Defendant from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Napa Premium Outlets Common Area Facility)

140. Martinez incorporates the allegations contained in paragraphs 1 through 107 for this claim.

141. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

142. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

143. Martinez alleges the Napa Premium Outlets Common Area Facility
is a public accommodation constructed, altered, or repaired in a manner that
violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or
both), and that the Napa Premium Outlets Common Area Facility was not exempt
under Health and Safety Code § 19956.

6 144. The Napa Premium Outlets Common Area Defendant's non-
7 compliance with these requirements at the Napa Premium Outlets Common Area
8 Facility aggrieved (or potentially aggrieved) Martinez and other persons with
9 physical disabilities. Accordingly, he seeks injunctive relief and attorney fees
10 pursuant to Health and Safety Code § 19953.

X. FIFTH CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

(The Kenneth Cole Facility)

15 145. Martinez incorporates the allegations contained in paragraphs 1
16 through 107 for this claim.

17 146. Title III of the ADA holds as a “general rule” that no individual
18 shall be discriminated against on the basis of disability in the full and equal
19 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
20 offered by any person who owns, operates, or leases a place of public
21 accommodation. 42 U.S.C. § 12182(a).

22 147. The Kenneth Cole Defendant discriminated against Martinez by
23 denying “full and equal enjoyment” and use of the goods, services, facilities,
24 privileges or accommodations of the Kenneth Cole Facility during each visit and
25 each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

27 148. The ADA specifically prohibits failing to remove architectural
28 barriers, which are structural in nature, in existing facilities where such removal

1 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
 2 achievable” is defined as “easily accomplishable and able to be carried out
 3 without much difficulty or expense.” *Id.* § 12181(9).

4 149. When an entity can demonstrate that removal of a barrier is not
 5 readily achievable, a failure to make goods, services, facilities, or
 6 accommodations available through alternative methods is also specifically
 7 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

8 150. Here, Martinez alleges that the Kenneth Cole Defendant can easily
 9 remove the architectural barriers at the Kenneth Cole Facility without much
 10 difficulty or expense, and that the Kenneth Cole Defendant violated the ADA by
 11 failing to remove those barriers, when it was readily achievable to do so.

12 151. In the alternative, if it was not “readily achievable” for the Kenneth
 13 Cole Defendant to remove the Kenneth Cole Facility’s barriers, then the Kenneth
 14 Cole Defendant violated the ADA by failing to make the required services
 15 available through alternative methods, which are readily achievable.

16 Failure to Design and Construct an Accessible Facility

17 152. On information and belief, the Kenneth Cole Facility was designed
 18 or constructed (or both) after January 26, 1992—individually triggering access
 19 requirements under Title III of the ADA.

20 153. The ADA also prohibits designing and constructing facilities for
 21 first occupancy after January 26, 1993, that aren’t readily accessible to, and
 22 usable by, individuals with disabilities when it was structurally practicable to do
 23 so. 42 U.S.C. § 12183(a)(1).

24 154. Here, the Kenneth Cole Defendant violated the ADA by designing
 25 or constructing (or both) the Kenneth Cole Facility in a manner that was not

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 28

1 readily accessible to the physically disabled public—including Martinez—when
2 it was structurally practical to do so.¹⁶

Failure to Make an Altered Facility Accessible

4 155. On information and belief, the Kenneth Cole Facility was modified
5 after January 26, 1992, independently triggering access requirements under the
6 ADA.

7 156. The ADA also requires that facilities altered in a manner that affects
8 (or could affect) its usability must be made readily accessible to individuals with
9 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
10 an area that contains a facility's primary function also requires adding making
11 the paths of travel, bathrooms, telephones, and drinking fountains serving that
12 area accessible to the maximum extent feasible. Id.

13 157. Here, the Kenneth Cole Defendant altered the Kenneth Cole Facility
14 in a manner that violated the ADA and was not readily accessible to the
15 physically disabled public—including Martinez—to the maximum extent
16 feasible.

Failure to Modify Existing Policies and Procedures

18 158. The ADA also requires reasonable modifications in policies,
19 practices, or procedures, when necessary to afford such goods, services,
20 facilities, or accommodations to individuals with disabilities, unless the entity
21 can demonstrate that making such modifications would fundamentally alter their
22 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

159. Here, the Kenneth Cole Defendant violated the ADA by failing to
make reasonable modifications in policies, practices, or procedures at the
Kenneth Cole Facility, when these modifications were necessary to afford (and

²⁸ ¹⁶ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
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Plaintiff's Complaint

would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

3 160. Martinez seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 161. Martinez also seeks a finding from this Court (*i.e.*, declaratory
7 relief) that the Kenneth Cole Defendant violated the ADA in order to pursue
8 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

XI. SIXTH CLAIM

Disabled Persons Act

(The Kenneth Cole Facility)

12 162. Martinez incorporates the allegations contained in paragraphs 1
13 through 107 for this claim.

14 163. California Civil Code § 54 states, in part, that: Individuals with
15 disabilities have the same right as the general public to the full and free use of
16 the streets, sidewalks, walkways, public buildings and facilities, and other public
17 places.

18 164. California Civil Code § 54.1 also states, in part, that: Individuals
19 with disabilities shall be entitled to full and equal access to accommodations,
20 facilities, telephone facilities, places of public accommodation, and other places
21 to which the general public is invited.

165. Both sections specifically incorporate (by reference) an individual's
rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 166. Here, the Kenneth Cole Defendant discriminated against the
25 physically disabled public—including Martinez—by denying them full and equal
26 access to the Kenneth Cole Facility. The Kenneth Cole Defendant also violated
27 Martinez’s rights under the ADA, and, therefore, infringed upon or violated (or
28 both) Martinez’s rights under the Disabled Persons Act.

1 167. For each offense of the Disabled Persons Act, Martinez seeks actual
2 damages (both general and special damages), statutory minimum damages of one
3 thousand dollars (\$1,000), declaratory relief, and any other remedy available
4 under California Civil Code § 54.3.

5 168. He also seeks to enjoin the Kenneth Cole Defendant from violating
6 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to
7 recover reasonable attorneys' fees and incurred under California Civil Code §§
8 54.3 and 55.

XII. SEVENTH CLAIM

Unruh Civil Rights Act

(The Kenneth Cole Facility)

12 169. Martinez incorporates the allegations contained in paragraphs 1
13 through 107 for this claim.

14 170. California Civil Code § 51 states, in part, that: All persons within
15 the jurisdiction of this state are entitled to the full and equal accommodations,
16 advantages, facilities, privileges, or services in all business establishments of
17 every kind whatsoever.

18 171. California Civil Code § 51.5 also states, in part, that: No business
19 establishment of any kind whatsoever shall discriminate against any person in
20 this state because of the disability of the person.

172. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

23 173. The Kenneth Cole Defendant's aforementioned acts and omissions
24 denied the physically disabled public—including Martinez—full and equal
25 accommodations, advantages, facilities, privileges and services in a business
26 establishment (because of their physical disability).

1 174. These acts and omissions (including the ones that violate the ADA)
2 denied, aided or incited a denial, or discriminated against Martinez by violating
3 the Unruh Act.

4 175. Martinez was damaged by the Kenneth Cole Defendant' wrongful
5 conduct, and seeks statutory minimum damages of four thousand dollars
6 (\$4,000) for each offense.

7 176. Martinez also seeks to enjoin the Kenneth Cole Defendant from
8 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and
9 costs incurred under California Civil Code § 52(a).

XIII. EIGHTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Kenneth Cole Facility)

3 177. Martinez incorporates the allegations contained in paragraphs 1
4 through 107 for this claim.

178. Health and Safety Code § 19955(a) states, in part, that: California
public accommodations or facilities (built with private funds) shall adhere to the
provisions of Government Code § 4450.

179. Health and Safety Code § 19959 states, in part, that: Every existing
(non-exempt) public accommodation constructed prior to July 1, 1970, which is
altered or structurally repaired, is required to comply with this chapter.

1 180. Martinez alleges the Kenneth Cole Facility is a public
2 accommodation constructed, altered, or repaired in a manner that violates Part
3 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and
4 that the Kenneth Cole Facility was not exempt under Health and Safety Code §
5 19956.

6 181. The Kenneth Cole Defendant's non-compliance with these
7 requirements at the Kenneth Cole Facility aggrieved (or potentially aggrieved)

1 Martinez and other persons with physical disabilities. Accordingly, he seeks
 2 injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

3 **XIV. NINTH CLAIM**

4 **Americans with Disabilities Act of 1990**

5 Denial of “Full and Equal” Enjoyment and Use

6 (The Tommy Hilfiger Facility)

7 182. Martinez incorporates the allegations contained in paragraphs 1
 8 through 107 for this claim.

9 183. Title III of the ADA holds as a “general rule” that no individual
 10 shall be discriminated against on the basis of disability in the full and equal
 11 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
 12 offered by any person who owns, operates, or leases a place of public
 13 accommodation. 42 U.S.C. § 12182(a).

14 184. The Tommy Hilfiger Defendant discriminated against Martinez by
 15 denying “full and equal enjoyment” and use of the goods, services, facilities,
 16 privileges or accommodations of the Tommy Hilfiger Facility during each visit
 17 and each incident of deterrence.

18 Failure to Remove Architectural Barriers in an Existing Facility

19 185. The ADA specifically prohibits failing to remove architectural
 20 barriers, which are structural in nature, in existing facilities where such removal
 21 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
 22 achievable” is defined as “easily accomplishable and able to be carried out
 23 without much difficulty or expense.” *Id.* § 12181(9).

24 186. When an entity can demonstrate that removal of a barrier is not
 25 readily achievable, a failure to make goods, services, facilities, or
 26 accommodations available through alternative methods is also specifically
 27 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

28